



California Regional Water Quality Control Board Los Angeles Region

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<http://www.waterboards.ca.gov/losangeles>



Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

February 22, 2012

Mr. Jaime Fontes
City Manager
City of Santa Paula
P.O. Box 569
Santa Paula, CA 93061

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Claim No. 7010 3090 0002 1022 2988

REPLY TO "SUPPLEMENTAL RESPONSE TO THE DEMAND OF PAYMENT FOR STIPULATED PENALTIES DATED SEPTEMBER 22, 2011 AND SETTLEMENT OFFER NO. R4-2011-0121-M DATED SEPTEMBER 22, 2011" – CITY OF SANTA PAULA, SANTA PAULA WASTEWATER RECLAMATION FACILITY, 905 CORPORATION STREET, SANTA PAULA, CALIFORNIA (ORDER NOS. 97-041, R4-2008-0170, AND R4-2009-0124, NPDES PERMIT NO. CA0054224, CI NO. 1759)

Dear Mr. Fontes:

We received your letter dated January 26, 2012 regarding the City of Santa Paula's (City) supplemental response to the Los Angeles Regional Water Quality Control Board's (Regional Board) Demand of Payment for Stipulated Penalties dated September 22, 2011 and Settlement Offer to Participate in Expedited Payment Program No. R4-2011-0123-M dated September 22, 2011. The Demand of Payment required the City to pay stipulated penalties associated with the Stipulated Consent Judgment and Final Order (Consent Judgment) in the case of *People of the State of California, ex rel. Regional Board v. City of Santa Paula* (Ventura County Superior Court Case No.: 56-2007-00304441-CU-MC-VTA). The Settlement Offer concerned an offer to settle certain alleged effluent limit violations subject to mandatory minimum penalties (MMPs). In your letter, the City requested that the Regional Board consider information provided and rescind certain effluent limit violations for nitrate + nitrite as nitrogen and residual chlorine that are subject to stipulated penalties.¹ This letter addresses your comments in this regard.

Nitrate + Nitrite as Nitrogen

Comment:

The City states the nitrate + nitrite as nitrogen monthly average effluent limit violation that occurred on May 5, 2010 was due to intermittent flow, collected over a 24-hour period, as the majority of the flow was being directed to the new Water Recycling Facility. The City states that the effluent limits,

¹ The Regional Board's Settlement Offer to Participate in Expedited Payment Program No. R4-2011-0123-M dated September 22, 2011 noted violations of total dissolved solids (TDS) and iron. In correspondence dated December 30, 2011, Regional Board staff rescinded the two monthly average effluent limit violations for TDS, as well as one of four monthly average effluent limit violations for iron. Since the February 1, 2010 monthly average effluent limit violation for iron is not subject to MMPs, Settlement Offer No. R4-2011-0121-M was reduced from \$12,000 to \$6,000 accordingly for the remaining two iron exceedances. Based on the City's letter dated January 26, 2012, which only concerned violations of nitrate + nitrite as nitrogen and residual chlorine, it appears that the City is no longer contesting the two iron effluent limit violations.

both concentration and mass-loading, are based on the science that shows what the maximum loading of the receiving stream will bear. Since the total flow on May 5, 2010 was 0.3951 MGD, the mass-loading was not exceeded. Therefore, given the mass loading of the discharge to the Santa Clara River being below the allowable limit of 300 lbs/day, the penalty amount should be reduced.

Staff's Response:

Regional Board staff has reviewed the information provided by the City and has concluded that the March 5, 2010 monthly average nitrate + nitrite as nitrogen effluent limit violation remains a valid violation. The Consent Judgment states that the City must comply with monthly average interim effluent limits of 14 mg/L (concentration limit) and 300 lbs/day (mass-loading limit) for nitrate + nitrite as nitrogen from the date of entry of the Consent Judgment (September 24, 2007) through December 15, 2010. The Consent Judgment does not include any provisions or exceptions concerning reduced flow of the facility. The Consent Judgment is clear; if either of these monthly average limits are exceeded, the City shall pay a stipulated penalty of \$20,000 per month. Although the facility did not exceed the mass-loading limit, the facility exceeded the concentration limit. Therefore, the monthly average effluent limit violation for nitrate + nitrite as nitrogen on May 5, 2010 remains valid and subject to stipulated penalties pursuant to the Consent Judgment.

Residual Chlorine

Comment:

The City contests all but three (3) of the twenty (20) residual chlorine violations because they are not of actual chlorine discharge events, but of time recorded during analyzer maintenance.

Staff's Response:

Regional Board staff has reviewed the information provided by the City and has concluded that fifteen (15) of the twenty (20) instantaneous maximum residual chlorine violations will be dismissed. For the fifteen (15) dismissed violations, Regional Board staff determined that the City provided sufficient evidence that those exceedances occurred either during cleaning or recalibrating of the analyzer, as noted in either the facility logbook or analyzer logbook, or both. For the remaining five (5) violations, Regional Board staff determined that the City did not provide sufficient evidence that those exceedances were related to cleaning or recalibration events as there was no direct correlation between the time of the exceedance in the facility's supervisory control and data acquisition (SCADA) system and the documentation provided. Therefore, these five (5) violations remain valid and subject to stipulated penalties pursuant to the Consent Judgment.

Conclusion

Based on the above, enclosed with this letter is "Amended Exhibit 'A' – Notice of Violation." As indicated on the Amended Exhibit "A", the City is still subject to \$35,000 in stipulated penalties pursuant to the Consent Judgment. In addition, penalties associated with Settlement Offer No. R4-2011-0121-M remained at \$6,000.

Stipulated penalties in the amount of \$35,000 are due and payable immediately. Payment must be made by certified or cashier's check payable to the State Water Pollution Cleanup and Abatement Account. The check may be hand-delivered or mailed to the Regional Board, Attention: Executive Officer. Regional Board staff will be responsible for depositing the check into the Cleanup and

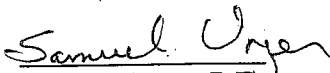
February 22, 2012

Abatement Account. Concurrent with the payment, the City shall send notice of payment to Jennifer Fordyce, Staff Counsel, at the address listed in Section XVIII of the Consent Judgment. If the Regional Board does not receive full payment of \$35,000 by **March 23, 2012**, the Regional Board will invoke the Dispute Resolution provisions outlined in Section XII of the Consent Judgment to resolve this matter.

As for the violations subject to Settlement Offer No. R4-2011-0121-M, the Regional Board has established new deadlines. If the City intends to participate in the Expedited Payment Program, an authorized representative must sign and return the enclosed revised Acceptance of Conditional Resolution and Waiver of Right to Hearing form to the Regional Board by **March 23, 2012**. By signing the Revised Acceptance and Waiver, the City agrees to pay the penalty of \$6,000 as indicated on the Amended Exhibit "A" – Notice of Violation and waives the right to a hearing. If the City does not elect to sign the Revised Acceptance and Waiver, you will be contacted regarding formal enforcement action that will be initiated with regard to the contested violations.

If you have any questions regarding the Consent Judgment, please contact Staff Counsel Jennifer Fordyce at (916) 324-6682. If you have questions regarding the Settlement Offer, please contact Mr. Hugh Marley at (213) 620-6375.

Sincerely,


Samuel Unger, P.E.
Executive Officer

Enclosures:

Amended Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: (via email)

Ms. Jennifer Fordyce, Office of Chief Counsel, State Water Resources Control Board
Ms. Marilyn Levin, Office of the Attorney General
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Mr. Jim Kuykendall, Stantec
Mr. John Cotti, City of Santa Paula, City Attorney
Mr. Brian Yanez, City of Santa Paula, Interim Public Works Director
Ms. Sandra K. Easley, City of Santa Paula, Interim Finance Director
Ms. Peggy Higgins, City of Santa Paula, Deputy City Clerk
Ms. Lucy Blanco, City of Santa Paula, Sr. Administrative Assistant

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty	Document Penalty is Addressed by:†
05/01/09	May 09	Monthly Average	TDS	33,158	31,900	lbs/day	1	4%	Chronic	(i)1	Dismissed	Settlement Offer No. R4-2011-0121-M
06/14/09	Jun 09	Instantaneous Max	Residual Chlorine	2.38 mg/L - 1.43 mins	0.1	mg/L	2	2280%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
06/27/09	Jun 09	Instantaneous Max	Residual Chlorine	3.10 mg/L - 2.92 mins	0.1	mg/L	2	3000%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
07/01/09	Jul 09	Monthly Average	TDS	35,246	31,900	lbs/day	1	10%	Chronic	(i)1	Dismissed	Settlement Offer No. R4-2011-0121-M
07/01/09	Jul 09	Monthly Average	Iron	7.4	6.38	lbs/day	1	16%	Chronic	(i)1	Dismissed	Settlement Offer No. R4-2011-0121-M
07/08/09	Jul 09	Instantaneous Max	Residual Chlorine	0.8 mg/L - 8.93 mins	0.1	mg/L	2	700%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
07/13/09	Jul 09	Instantaneous Max	Residual Chlorine	7.9 mg/L - 23.38 mins	0.1	mg/L	2	7800%	Serious	(h)1	\$3,000	Demand of Payment for Stipulated Penalties
07/14/09	Jul 09	Instantaneous Max	Residual Chlorine	0.99 mg/L - 38.88 mins	0.1	mg/L	2	890%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
07/15/09	Jul 09	Instantaneous Max	Residual Chlorine	2.54 mg/L - 73.35 mins	0.1	mg/L	2	2440%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
08/03/09	Aug 09	Monthly Average	Iron	370	300	ug/L	1	23%	Chronic	(i)1	\$3,000	Settlement Offer No. R4-2011-0121-M
08/03/09	Aug 09	Monthly Average	Iron	8.05	6.38	lbs/day	1	26%	Chronic	(i)1	\$3,000	Settlement Offer No. R4-2011-0121-M

† For ease of reference, all violations are included in this Exhibit A. However, please refer to the listed document for payment instructions.

Date	Monitoring Period	Violation Type	Parameter	Reported Value	Permit Limit	Units	Pollutant Category	% Exceeded	Serious/Chronic	Water Code Section 13385	Penalty	Document Penalty is Addressed by: †
02/01/10	Feb 10	Monthly Average	Iron	370	300	ug/L	1	23%	Chronic	(i)1	\$0	Settlement Offer No. R4-2011-0121-M
03/02/10	Mar 10	Instantaneous Max	Residual Chlorine	4.98 mg/L - 17.42 mins	0.1	mg/L	2	4880%	Serious	(h)1	\$3,000	Demand of Payment for Stipulated Penalties
03/05/10	Mar 10	Instantaneous Max	Residual Chlorine	4.98 mg/L - 2.48 mins	0.1	mg/L	2	4880%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
03/09/10	Mar 10	Instantaneous Max	Residual Chlorine	4.16 mg/L - 7.47 mins	0.1	mg/L	2	4060%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
03/18/10	Mar 10	Instantaneous Max	Residual Chlorine	4.98 mg/L - 3.67 mins	0.1	mg/L	2	4880%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
03/21/10	Mar 10	Instantaneous Max	Residual Chlorine	2.28 mg/L - 2.48 mins	0.1	mg/L	2	2180%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
03/25/10	Mar 10	Instantaneous Max	Residual Chlorine	2.36 mg/L - 12.45 mins	0.1	mg/L	2	2260%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
03/27/10	Mar 10	Instantaneous Max	Residual Chlorine	4.98 mg/L - 7.45 mins	0.1	mg/L	2	4880%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties
03/29/10	Mar 10	Instantaneous Max	Residual Chlorine	4.40 mg/L - 17.45 mins	0.1	mg/L	2	4300%	Serious	(h)1	\$3,000	Demand of Payment for Stipulated Penalties
04/10/10	Apr 10	Instantaneous Max	Residual Chlorine	1.91 mg/L - 74.92 mins	0.1	mg/L	2	1810%	Serious	(h)1	\$3,000	Demand of Payment for Stipulated Penalties
04/13/10	Apr 10	Instantaneous Max	Residual Chlorine	4.98 mg/L - 7.47 mins	0.1	mg/L	2	4880%	Serious	(h)1	Dismissed	Demand of Payment for Stipulated Penalties

† For ease of reference, all violations are included in this Exhibit A. However, please refer to the listed document for payment instructions.

† For ease of reference, all violations are included in this Exhibit A. However, please refer to the listed document for payment instructions.

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

City of Santa Paula
Settlement Offer No. R4-2011-0121-M
NPDES Permit No. CA0054224

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), City of Santa Paula (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the Notice of Violation (NOV), which is attached hereto as Amended Exhibit "A" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Permittee agrees to pay the penalties required by California Water Code section 13385, in the sum of \$6,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV. The Permittee understands that this Acceptance and Waiver waives the Permittee's right to contest the allegations in the NOV and the amount of civil liability for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NOV.

Upon execution by the Permittee, the completed Acceptance and Waiver shall be returned to:

Kristie Kao, Enforcement Unit
Expedited Payment Program
Regional Water Quality Control Board, Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, California 90013

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.

Settlement Offer No. R4-2011-0121-M
CI No. 1759, NPDES Permit No. CA0054224

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee further understands that once the Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385(n)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$6,000 liability shall be paid by a cashier's or certified check for \$6,000 made out to the "State Water Pollution Cleanup and Abatement Account". The payment must be submitted to the Regional Board no later than ten (10) calendar days after the date the Permittee receives written notice that the Regional Board Executive Officer has executed this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

City of Santa Paula

By:

(Signed Name)

(Date)

JAIWE M. FONTES

(Printed or typed name)

CITY MANAGER

(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____

Samuel Unger, P.E.

Executive Officer